

MEMORANDUM FOR RECORD

November 23, 2016

SUBJECT: U.S. Environmental Protection Agency Review of proposed DuPuis Permittee Responsible Offsite Mitigation Area (PROMA) to offset wetland impacts associated with the proposed State Road 7 Extension Project; SAJ-2015-01094(SP-RT)

The U.S. Environmental Protection Agency (EPA) analysis of Dupuis PROMA and general comments are provided below.

1. November 3, 2015, Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.
  - a) The EPA is of the understanding the DuPuis PROMA was purchased with funds provided to the South Florida Water Management District from the Saves Our Rivers Program and other conservation funds. These funds were to be used to purchase DuPuis, along with wetland restoration and long-term management of the area. The Presidential Memorandum; Section 3 (b) references mitigation on any site must be new mitigation and would not have occurred in the absence of mitigation (additionally) when determining whether those measures adequately address impacts to natural resources.
  - b) Section 3(e) reference public transparency in implementation of mitigation policy and guidance. It further states agencies should set measurable performance standards at the project. The EPA has not been provided performance standards for the Dupuis site. In addition, the Florida Department of Transportation (FDOT) referenced in one of their submittals to the EPA a Ten Year Management Plan (2014 to 2024) for DuPuis. (b) (5)  
[REDACTED]
  - c) Section 3(g) Each agency should ensure consistent implementation of its policies and standards across the nation and hold all compensatory mitigation mechanisms to equitable and effective standards when implementing their policies. (b) (5)  
[REDACTED]
  - d) Base on the above comments, (b) (5)  
[REDACTED]

2. April 10, 2008, Mitigation Rule: Compensatory Mitigation for Losses of Aquatic Resources.

a) (b) (5)

b) (b) (5)

This is further emphasized in the joint Corps/EPA question and answers document which states; (1) Mitigation Banks are preferred over PROMAs because mitigation banks provide consolidated compensatory mitigation projects that have less risk and uncertainty; (2) Mitigation Banks use a multi-resource agency process that brings more expertise and collaboration into the planning approval, and oversight of wetland restoration and protection projects; (3) and Mitigation Banks have less risk than PROMAs to achieve desired long-term outcomes and to provided wetlands, streams, and other aquatic habitats that are protected in perpetuity by organizations dedicated to resource conservation. (b) (5)

c) The Mitigation Rule in 33 CFR § 332.3(a)(3), states that credits for mitigation on public land must be based solely on aquatic resource functions provided by the compensatory mitigation project, separate and apart from the original public purposes for that public land. In addition, the Mitigation Rule states; Except for projects undertaken by federal agencies, or where federal funding is specifically authorized to provide compensatory mitigation, federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program, Conservation Reserve Program, and Partners for Wildlife Program activities, *cannot be used for the purpose of generating compensatory mitigation credits for activities authorized by [Army Corps] permits.* However, compensatory mitigation credits may be generated by activities undertaken in conjunction with, but supplemental to maximize the overall ecological benefits of the restoration or conservation project. 33 CFR § 332.3(j). Therefore, the EPA has concerns that the purchase, restoration, and management of DuPuis was provided by conservation funds, which make the site inappropriate for federal mitigation purposes.

### 3. General

- a) According to the FDOT submittals to the EPA, the proposed PROMAs are not within the project basin boundaries which further promotes the use of the federally approved mitigation banks in the area.
- b) The EPA is concerned with the lack of transparency associated with the PROMAs proposed for mitigation for the State Road 7 Project.
- c) Please provide the EPA with all federal mitigation permits associated with the DuPuis site.
- d) In conclusion, the EPA requests that the Corps conduct a thorough analysis of the DuPuis documents to ensure compliance with 2015 Presidential Memorandum and the 2008 Mitigation Rule. The EPA preference to use federally approved Loxahatchee and Bluefield Ranch Mitigation Banks (for hydric pine flatwood credits or availability of credits) over PROMAs for mitigation necessary to offset unavoidable wetland impacts proposed by the State Road 7 Project.